IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

MFA.No. 713 of 2002(E)

OPMV.149/1991 of ADDL.MOTOR ACCIDENT CLAIMS TRIBUNAL, KOLLAM

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APPELLANT: 1ST RESPONDENT IN OP(MV)

INDIAN OIL CORPORATION,
COCHUVELI, THIRUVANATHAPURAM,
REPRESENTED BY ITS SENIOR OPERATIONS MANAGER,
ZACHARIAH THOMAS.

BY ADV. SRI.P.V.BABY
SRI.A.N.SANTHOSH

RESPONDENTS: PETITIONER & 3RD RESPONDENT IN OP(MV)

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1. MUHAMMEDKUNJU, S/O.ABOOBACKERKUNJU,
CHEMPADATHU VEEDU, KUNDUMON, ADICHANALLOOR P.O.

2. THE DIVISONAL MANAGER,
M/S.UNITED INDIA INSURANCE CO.LTD.,
THIRUVANANTHAPURAM.

BY ADV. SRI.M.S.PATTALI
SRI.T.VINOD KUMAR

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 06/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A.No.713 of 2002

Dated this the 6th August, 2007.

J U D G M E N T

The first respondent, owner, in O.P.(M.V) No.149/1991, on the file of the Motor Accidents Claims Tribunal, Kollam, is the appellant. The first respondent-petitioner filed the Original Petition claiming compensation, impleading the appellant, its driver and also the Insurer, alleging that on 15.9.90, a tanker lorry driven by the second respondent in the Original Petition, hit against the car, in which he was travelling, causing injuries on his person. The appellant did not appear and contest. The driver also did not contest the matter. The Insurer alone filed a written statement contending that the appellant did not furnish policy details. Hence, it was not possible to locate the policy. It was also contented that there was no negligence on the part of the driver of the lorry, and the accident occurred not due to the negligence of the driver himself.

2. The Tribunal found that the accident occurred due to the negligence of the driver. It also found that the first respondent was entitled to get a compensation of Rs.24,250/=. Since, the

appellant failed to produce the policy particulars, the Insurer was exonerated and the appellant was directed to pay the entire compensation. Challenging that award, this appeal is filed.

3. The Tribunal found that the accident occurred due to the negligence of the driver of the appellant. I have carefully gone through the pleadings and evidence. Neither the appellant nor the driver contested the matter. The evidence given by the first respondent shows that the accident occurred due to the negligence of the driver of lorry bearing Registration No.KRV 5738, which is a finding of fact based on good evidence. I do not find any reason to interfere with that finding. The Tribunal awarded a compensation of Rs.24,250/=. The first respondent sustained Collis fracture left side and other injuries. There was a head injury also. So, the quantum of compensation awarded is also reasonable.

4. The only question arising for consideration in this appeal is whether the Insurer can be made liable for the compensation awarded. It is true that the appellant did not appear and contest the matter. The appellant produced a letter written by the Insurance Company to appellant admitting the existence of a valid policy, in

respect of the vehicle. The tanker lorry involved in the accident was KRV 5738. The letter shows that that vehicle was covered with a valid policy of Insurance, No.1365 of 1990, issued by the second respondent. The company paid an amount of Rs.16,469/= to the appellant as damages sustained to the vehicle, for settling own damage claim. It is submitted by the counsel for the appellant that in the very same accident, another person also sustained injuries, and in that case, the second respondent, Insurance Company had paid the entire compensation to the applicant admitting the existence of a valid policy. Hence, I am of the view that in this case also, the Insurer is bound to indemnify the insured.

5. It is pointed out by the counsel for the appellant that appellant had already deposited an amount of Rs.50,000/=, and the first respondent was allowed to withdraw one-half of the amount deposited. In view of the finding that the vehicle was covered with a valid policy of Insurance, the Insurer is directed to pay the compensation. If the appellant had already paid or deposited the entire amount, the appellant is entitled to get reimbursement of such amount from the Insurer.

In the result, the appeal is allowed in part. The finding of the Tribunal that appellant alone is liable to pay compensation and Insurer is not liable to pay the same, is vacated. It is found that the second respondent, Insurer, is liable to indemnify the appellant. If the appellant had already paid the compensation, it can claim reimbursement from the Insurance Company. The Insurer is directed to reimburse the said amount, in case, if it fails, the appellant can recover the same by executing this judgment.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

M.F.A.No.713 of 2002

J U D G M E N T

Dated: 6th August, 2007.